***THE HONOURABLE Dr. JUSTICE G. YETHIRAJULU**

+ Writ Petition No.13376 of 2004.

% Dated: 17-08-2004.

M. Srinivas Reddy & 4 others **… Petitioners**

$Union of India, rep. by its Secretary,Railway Board,

Rail Bhavan, New Delhi and 3 others.

… Respondents

! Counsel for petitioners: Mr.J.M. Naidu

^ Counsel for respondents: Mr.Gouri Shankar Sanghi, Standing

Counsel for Railway Board.

< GIST:

>HEAD NOTE:

?Cases referred:

1. An unreported judgment of this Court in W.P.no.29414 of 1998 dated 10-2-1999 delivered by Hon'ble Ms. Justice S.V.Maruthi.
2. (2003) 8 SCC 440
3. (1969) 1 SCC 817
4. 2001 (2) ALD 678 (DB)
5. 1997 (4) Supreme 352

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO. 13376 OF 2004

Between:

1. M. Srinivas Reddy, S/o Late Narsimha Reddy, Hindu,

   R/o H.No. 1-1-5/3, Amaravadi nagar, Thallagadda, Suryapet

   Mandal, Nalgonda District.

2. G. Satyanarayana, S/o Subba Rao, Hindu,

   R/o C/o RPF Office,Nalgonda, Nalgonda District.

3. A. Srinivas Reddy, S/o Sathi Reddy , Hindu,

   R/o Appajipet (Village), Nalgonda Mandal and District.

4. P. Srinivas Rao, s/o P. Venkaiah, Hindu,

   c/o R.P.F. Office, Nalgonda,Nalgonda District.

5. A. Bhaskar Rao, S/o A. Nageswara Rao, R/o Secunderabad.

... PETITIONERS

AND

1 Union of India, rep. by its Secretary,
Railway Board, Rail Bhavan, New Delhi.
2 The Chief Security Commissioner/RPF, South Central Railway,

Railnilayam, Secunderabad.
3 The Chief Personal Officer, S.C. Rly, Rail Nilayam, Secunderabad.
4 The Deputy Chief Security Commissioner, Rail Nilayam, Secunderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in not allowing the petitioners for change of cadre as ministerial staff i.e., Junior Clerk in the scale of Rs. 3050-4590 RS (RP) in pursuant to the Notification No. P/PE/228/New Zones/Vol.I, dated 4-6-2004 of the 3rd respondent through his proceedings No. X/P.95/Policy, dt. 12-7-2004, which is based on the 1st respondent's Board Lr.No. E(NG)I/2002/PM2/9, dt, 11-8-2003 and letter No. E(NG)I/2002/PM2/9, dt. 24-3-2004 as illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondents to absorb the petitioners as Junior Clerks on change of cadre.

Counsel for the Petitioner: Mr.J.M.Naidu

Counsel for the Respondents: Mr.Gouri Shankar Sanghi for Rmapp.

The Court at the admission stage made the following:

HON'BLE Dr. JUSTICE G.YETHIRAJULU

Writ Petition No.13376 of 2004

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Order:

1. The petitioners are working as Constables in Railway Protection Force appointed on various dates from 1998 to 2000. The third respondent who is the Chief Personnel Officer, South Central Railway, Secunderabad circulated a notification vide proceedings No.P/LE/228/New Zones/Vol.I, dated 04-6-2004 inviting option from Group-C staff having graduate qualification (Technical/non-technical categories) to join as Ministerial Staff in the time-scale of Rs.3050 – 4590 RS (RP) on bottom seniority as Junior Clerks on permanent basis as a change of Cadre from one category to another category at North Eastern Division. The last date for exercising the option was fixed as 30-6-2004. The Divisional Security Commissioners forwarded all the applications submitted by the petitioners to the second respondent instead of sending them to the third respondent. The last date for forwarding the applications to the third respondent was 12-7-2004. The second respondent instead of forwarding the applications

to the third respondent declined to forward those applications through proceedings No.X/P.95/Policy dated
12-7-2004 on the basis of the first respondent's proceedings viz., Railway Board's letter No.E(NG)I/2002/PM2/9 dated 11-8-2003, (RBE No.139/2003) and letter No.E(NG)I/2002/PM2/9 dated 24-3-2004 (RBE No.64/04), which are based on the judgment of the Central Administrative Tribunal Principal Bench, New Delhi vide O.A.No.2661 of 2003. The petitioners being aggrieved by the action of the second respondent in issuing the proceedings dated 4-6-2004 and the proceedings of the third respondent dated 12-7-2004 basing of the first respondent's letters dated 11-8-2003 and 24-3-2004 approached this Court for issuing a writ of Mandamus holding them illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

2. It is an undisputed fact that the petitioners are working as Constables in the Railway Protection Force. They are under the administrative control of the Director General and under the overall supervision of the General Manager, South Central Railway, Secunderabad. The General Manager issued a notification dated
4-6-2004 providing the facility of option to the Group-C staff to those who possess Graduate Degree (Technical/non-technical categories) to join as ministerial staff in the time-scale of Rs.3050 – 4590 RS (RP) on bottom seniority. In the said notification the General Manager mentioned that it is decided to extend the facility of option to all the graduates (technical/non-technical categories) working in Group-C posts to work as ministerial staff i.e., Junior Clerks on permanent basis as a change of cadre from one category to another at "NED" subject to certain conditions. It was further mentioned in the said notification that this is a rare opportunity extended as one time dispensation for change of category to all technical and non-technical categories (other than running staff) to opt for ministerial category on bottom seniority. He further mentioned that there is likelihood of better chances of promotion on NED Division in the ministerial cadre due to availability of vacancies. It was also mentioned that this factual position may be brought to the notice of the concerned duly giving wide

publicity as no staff should feel that they have lost the opportunity because of unawareness of this letter. The General Manager further mentioned in the notification that options exercised before 30-6-2004 should be forwarded to the Divisional Head Quarters before 5-7-2004 and the Divisional Head Quarters should forward the same through SPO/Rules in a bunch by 12-7-2004. The said notification was marked to GS/SCRE Sangh/SC, GS/SCRM Union/SC, SC/ST Association/SC, All SPOs and APOs in Head Quarters for the purpose of information.

3. The petitioners made their applications within time by opting for ministerial cadre on bottom seniority and submitted them to the Divisional Security Commissioner and he forwarded those applications to the second respondent. The second respondent instead of forwarding those applications to the third respondent issued a proceeding dated 12-7-2004 mentioning as follows:

> With reference to the above, it is to inform that the RPF staff are not permitted to opt for the post of Jr.Clerk vide reference cited above in the light of Boards letter No.E(NG)/I/2002/PM-2/9 dated 11-8-2003 and Lr.No.2003/Sec(E)/PM-3/3 dated 16-2-2004 circulated vide this office letter of even No. dated 5-9-2003 and 27-2-2004 respectively.
>
> In view of the above position, the applications of RPF staff forwarded by the divisions for the post of Junior Clerks in NED division are returned herewith. The staff may be informed accordingly.
>
> This issues with the approval of CSC/SC

4. The copies of this proceeding were marked to the General Secretary, RPFA/SCR for information and ISPF/SIB, 'A'Coy/HQrs. and QM for information and necessary action.

5. The petitioners contended that they are being treated as "railway servants" for all practical purposes, in view of Section 10 of the Railway Protection Force Act, 1957 (for short 'the Act') and it reads as follows:

> **Section 10:**
>
> The Director General and every member of the force shall for all purposes be

regarded as “railway servants” within the meaning of the Indian Railways Act, 1890 (9 of 1890), other than Chapter VI-A thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act.

6. The learned counsel submitted that except the disciplinary proceedings which is within the purview of the Director General, the petitioners are governed by Rule 80 of the Railway Protection Force Rules, 1987 (for short ‘the RPF Rules’) for the purpose of Provident Fund, Gratuity, Pension, medical facility, passes etc. The learned counsel submitted that according to Rule 80 the servants of the Railway Protection Force shall be governed by the railway rules in the absence of specific provisions under the RPF Rules. Rule 80 of the RPF Rules reads as under:

80. Provident fund, gratuity, pension, medical facilities, passes etc.—

1. In matter relating to:

   i. Provident fund,

   ii. Gratuity,

   iii. Pension,

   iv. Medical facilities,

   v. Passes and Privileges Ticket Orders,

   vi. Educational assistance,

   vii. Travelling and transfer allowances, and

   viii. Other financial matters

   Superior officers and enrolled members of the Force shall be governed by the provisions of these rules or where no specific provision has been made in these rules then by the extant Railway Rules in the same manner as officers holding the corresponding ranks or grades in the railways are governed by the said Railway Rules:

   Provided that the extant Railway Rules relating to the aforesaid matters may be modified by the Central Government from time to time in their application to the members of the Force.

2. A Provident Fund Account book shall be issued to each member of the Force in which deductions made by the Pay Drawing Authority shall be periodically entered and authenticated.

7. The learned counsel also drew the attention of this Court to Section 2 (34) of the Railways Act, 1989, which defines the words “railway servant” and contended that in view of the amendment to Section 2 (34) under the Railways Second Amendment Act, 2003, which came into force on 1-7-2004, members of the Railway Protection Force appointed under clause (c) of sub-section (l) of Section 2 of the Railway Protection Force Act, 1957 are also coming under the definition of the “railway servants”. The definition of “railway servant” after the amendment reads as follows:

Sec.2 (34)

“Railway servant” means any person employed by the Central Government or by a railway administration in connection with the service of a railway, including member of the Railway Protection Force appointed under clause (c) of sub-section (l) of Section 2 of the Railway Protection Force Act, 1957.

8. The learned counsel for the petitioners further submitted that the security department in which the petitioners are now working is treated as one of the departments of railways and the respondents are therefore provided the channel of promotion to the Security Personnel also. When the respondents in the similar cases refused to forward the applications of the Constables for the post of Assistant Station Master in the year 1995, the employees have filed W.P.No.19521 of 1995 and an interim direction was given by this Court to forward the applications to the second respondent.

9. The learned counsel further submitted that the fourth respondent directed his subordinates to relieve the selected candidates in that connection for training by letter dated 14-8-1997. When the respondents denied the employees to undergo training, some of the employees filed W.P.No.25872 of 1995 on the file of this Court and this Court granted interim direction in W.P.M.P.No.31877 of 1995 dated 16-11-1995 and the petitioners therein were sent for training to the post of Assistant Station

Masters. The learned counsel further submitted that the action of the second respondent in refusing to forward the applications of the petitioners to the posts of Junior Clerks on the basis of the proceedings of the first respondent dated 11-8-2003 and letter dated 24-3-2004 is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution and the same may be declared as such.

10. The point for consideration is whether the petitioners who are working as RPF Constables can be treated as members of railway service for the purpose of making applications to the posts of Junior Clerks by virtue of an option given to all the graduates working in Group-C posts?

Point:

11. The third respondent issued a notification on 4-6-2004 mentioning that it is decided to extend the facility of option to all the graduates (technical/non-technical categories) working in Group-C posts (other than running staff) to work as ministerial staff i.e., Junior Clerk in scale Rs.3050 – 4590 on permanent basis as a change of cadre from one category to the other subject to certain conditions. It was further mentioned in the said notification that this is a rare opportunity extended as one time dispensation for change of category to all Technical and Non-technical categories (other than running staff) to opt for ministerial cadre on bottom seniority. There is likelihood of better chances of promotion on NED division in the ministerial cadre due to availability of vacancies.

12. On 12-7-2004 the second respondent addressed a letter to the Deputy Chief Security Commissioners and Assistant Security Commissioners of various places informing that the RPF staff are not permitted to opt for the post of Junior Clerks vide CPO/SC letter No.P/CE/228/New Zones/Vol.I dated 10-6-2004 in the light of the Boards letter No.E(NG)/I/2002/PM-2/9 dated 11-8-2003 and letter No.2003/Sec(E)/PM-3/3 dated 16-2-2004 circulated through the office letter dated 5-9-2003 and 27-2-2004 respectively. He further mentioned in the said letter that in view of the above position the applications of the

RPF staff forwarded by the divisions for the post of Junior Clerks in NED division are returned and the staff members may be informed accordingly. The Railway Board through its letter No.E(NG)I/2002/PM2/9 dated 11-8-2003 clarified the position on the plea of RPF Constables who applied for Junior Clerks and the said clarification to the extent necessary for the purpose of this writ petition reads as follows:

> The question whether the RPF/RPSF Personnel should be considered eligible to appear in the GDCE or other Departmental selections for appointment/promotion to posts in Departments other than RPF/RPSF in the Railways has been considered carefully by the Board in consultation with the Ministry of Home Affairs. As the Railways are aware, the scheme of GDCE has been introduced with the main objective of facilitating redeployment of surplus staff either by redeployment of such staff in the posts vacated by staff selected under GDCE or surplus eligible staff themselves getting selected under the scheme. However, the selection of RPF/RPSF staff under the GDCE cannot in any way facilitate redeployment of surplus staff. In view of this and on the analogy of practice being followed by the Central Police Forces (CPFs) under the control of the Ministry of Home Affairs as also the very nature of job and the method of recruitment in RPF/RPSF, it has been decided that the RPF/RPSF Personnel cannot be allowed to appear in the GDCE. They will also not be eligible to appear in other Departmental selections in Departments other than RPF/RPSF. However, the past cases decided otherwise will not be reopened.

13. Challenging the above letter dated 11-8-2003 some of the RPF Constables have filed an original application vide O.A.No.2661 of 2003 before the Central Administrative Tribunal, Principal Bench, New Delhi and the Tribunal in its order dated 30-12-2003 passed in the said application observed that RPF/RPSF cannot be said to be covered within the meaning of "other department staff". The Tribunal further held as follows:

> 7. ... We are inclined to agree with the contention of the respondents that the applicants are part of a combatised Force created specifically to look after the security needs of the Indian Railways and the mode of their selection and training has also been conducted in that direction only. Thus, creation of such posts appears to be totally unrelated to the ministerial needs. Admittedly, the applicants had joined the Force and underwent special training with the full knowledge and intent to remain as members of the combatised Force only and not to migrate to ministerial cadre. Undoubtedly, as admitted by the respondents as well, on certain earlier occasions some members of the RPF/RPSF staff had participated in the departmental

examinations for the post of Junior Cashier, but we tend to agree with the arguments of the respondents that, that by itself does not confer any right on otherwise ineligible members of the Force to appear in the examination because the applicants have not been able to produce before us any rules to show that they are entitled as a matter of right to appear in the examination for the post of Junior Cashier.

14. Subsequent to the Circular dated 11-8-2003 of the Railway Board, the All India RPF Association made a representation to the Ministry of Railways to permit the personnel of RPF to appear for appointment or for selection or examinations of the other Departments of Railways and the same was rejected on 16-2-2004. A communication was sent to that effect to the Chief Security Commissioner, Railway Protection Force, South Central Railway, Secunderabad in response to his letter dated 23-12-2003, and the same reads as follows:

The demand of All India RPF Association for allowing RPF personnel to appear in the GDE of the railway has been considered in consultation with the establishment, directorate of Ministry of Railways. It is however regretted that the demand of All India RPF Association cannot be agreed to.

15. In **V. Damodar Rao and another v. The Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad & others** a learned single Judge of this Court held as follows:

The petitioner's contention cannot be accepted in view of the fact that the RPF Department is not included in Chapter I of the Railway Establishment service rules under sub-section III which provides for recruitment and training for 14 departments. The departments included in the said Chapter are: 1) Transportation (Traffic) Department, 2) Commercial Department, 3) Transportation (Power) Department, 4) Mechanical and Electrical Engineering Department, 5) Civil Engineering Department, 6) Signal and Telecommunication Department, 7) Drawing Office Cadre, 8) Stores Department, 9) Skilled Artisans, 10) Medical Department (Para Medical Staff), 11) Scientific Staff, 12) Ministerial and Non-Ministerial Categories, 13) Official Language Department and 14) Railway School Staff.

The categories under the expression "Other Departments" mentioned under Rule 170 (1)(99)(c) relates to those categories only which are mentioned under Sub-Section 111 (XII) which is as under:

XII. Ministerial and Non-Ministerial Categories:

a. Accounts Department:

xxx

b. Other than Accounts Department:

a. Office Clerks, ii) Typists, iii) Stenographers.

It is therefore clear that the Railway Protection Force Department is not included in the Departments narrated above and also the category of Constables is not mentioned under Sub-Section 111 (XII)(b). Therefore, the petitioners are not eligible for consideration to the post of Cashiers. The writ petition has no merits and it is accordingly dismissed.

16. The learned counsel for the respondents further submitted that the policy deicsions of the Railway Board cannot be interfered with by this Court and it is for the State to decide whether any Department is to be included for the purpose of extending a particular benefit. The learned counsel for the petitioners submitted that permitting the employees of various departments of South Central Railway and denying similar opportunity to the personnel of Railway Protection Force amounts to discrimination and is violative of Articles 14 and 16 of the Constitution of India.

17. In this regard it may be appropriate to refer to certain decisions of the Supreme Court. In **Vijay Lakshmi v. Punjab University** while dealing with the question as regards to the reservation of posts in women's college/hostel for women only the Supreme Court observed as follows:

In the light of the established propositions of law interpreting Articles 14 to 16 it can be stated that there could be classification between male and female for certain posts. Such classification cannot be said to be arbitrary or unjustified. In cases where the policy decision is taken by the State beyond rules are framed accordingly, it cannot be termed to be arbitrary or unjustified. Hence it is not possible to hold that the rules empowering the authority to appoint only a lady Principal or a lady teacher or a lady doctor or a woman Superintendent are violative of Article 14 or 16.

It is not for the Court to sit in appeal against the policy decision taken by the State Government. It is for the State to decide whether such a rule is preventive one or precautionary measure.

18. In **Western U.P.Electric Power & Supply Co. Ltd., v. State of U.P.** the Supreme Court held as follows:

> Article 14 of the Constitution ensures equality among equals: its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similar circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law.

19. In **Chief Security Commr., SCR, RPF, Rail Nilayam, Sec'bad v. H. Srinivasa Rao** while answering the challenge made by the petitioners to a policy decision taken by the Railways as regards the merger of fire-service branch in the executive branch consequent on the closure of fire-service branch a Division Bench of this Court held as follows:

> The Court, normally, is not inclined to interfere with such policy decisions unless the same is found to be patently arbitrary or illegal. If the persons affected can show that there had been a flagrant violation of the policy decision itself, and then only the same can be subject matter of judicial review. A policy decision which is in the exclusive domain of the State can be struck down only when the same is ultra vires or unconstitutional. Bereft of violation of Articles 14 and 16 of the Constitution of India, no policy decision can be done away with.

20. In **State of Maharashtra v. Dr.Shri Hari Shankar Vaidhya** while dealing with the claim made by certain teachers working in Ayurvedic, Unani and Homeopathic aided institutions for pension and gratuity on par with State Government Civil Servants, the Supreme Court held that whether the scheme could be extended or not was a question of executive policy and the Court would not take responsibility of directing the Government to extend the policy. The Court requires examination as to how the policy laid down is being worked-out. Since it is stated that the extending of the above benefits to the teachers mentioned above involve huge financial outlay, the Supreme Court directed the Government to consider extension of the benefit of pension and gratuity scheme to the

teachers working in the Ayurvedic, Unani and Homeopathic aided educational institutions in a phased manner, as was done with respect to the other aided institutions.

21. The learned counsel for the petitioners submitted that in the definition of the word “railway servant” as amended in the Railway Protection Force (Amended) Act 2003, which came into force with effect from 1-7-2004, the member of Railway Protection Force is also included, therefore, the petitioners shall be treated as “railway servants” and a direction may be given to the respondents that they are entitled to make application for the Junior Clerk posts notified by the Chief Personnel Officer.

22. The Railway Protection Force (Amendment) Act, 2003 (Act 51 of 2003) was brought into existence with the following object:

> The railway administration has at its disposal seventy thousand personnel of the Railway Protection Force, which is an armed force of the Union. The Railway Protection Force has been given limited powers under the Railway Property (Unlawful Possession) Act, 1966 to take action against any person who is found in unlawful possession of railway property. However, the Railway Protection Force is not able to actively help the railway administration in dealing with day-to-day problems and to ensure smooth running of trains. Though the Railways Act, 1989 empowers the railway servants, including a Member of the Railway Protection Force, to arrest without warrant the persons committing offences mentioned in Section 179 of the said Act and to produce them before the nearest Magistrate, such persons are not empowered to either investigate or inquire into cases or launch prosecution in a court of law. These functions are performed by the State police.
>
> For effectively dealing with certain offences under the Railways Act, 1989, it is proposed that the officers authorized by the Central Government may be empowered to enquire and launch prosecution against the persons committing offences directly related to the functioning of the railways by amending the said Act. It is also proposed to empower these officers to search and seize any property and to file complaint in a Court of competent jurisdiction in respect of these offences. The authorized officers would not have the power in respect of certain serious offences viz., offences under Sections 150 to 152 of the Railways Act, 1989.

23. Act 51 of 2003 was brought into force for a specific purpose of empowering the officers of the Railway Protection Force to search and

seize any property and to file complaint in a Court of competent jurisdiction. Therefore, the inclusion of Railway Protection Force in the definition of "railway servant" is for the above purpose and not for any other purpose. If no such clarification is given by the Railway Board in its object, then there would have been a scope for interpreting the definition of "railway servant" and treating the members of the Railway Protection Force as railway servants for all purposes and as members of one of the departments under the direct control of the Railway Board, including the one of making applications for ministerial posts.

24. In the light of the policy decision of the Railway Board that the members of the Railway Protection Force cannot be treated as one of the Departments of the Railway Board, the judgments of the Supreme Courts referred supra and in the light of the order of the Central Administrative Tribunal Principal Bench, New Delhi in O.A.No.2661 of 2003, the petitioners being the members of the Railway Protection Force are being treated as a different class and they do not form the same class under which the members of other departments of the Railway Board were brought and treating them in a different standard does not amount to violation of the equal right provided under Articles 14 and 16 of the Constitution of India. There are no grounds to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution and to issue any direction by way of a writ of Mandamus against the respondents.

25. With the above observations, the writ petition is dismissed at the admission stage.

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(Dr.G.YETHIRAJULU, J)

August 2004.

Note:

L.R. copy be marked

(By order)

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

One fair copy to the Honourable Dr. Justice G.Yethirajulu(for his lordships kind perusal)

To

1. The Secretary, Union of India, Railway Board, Rail Bhavan,

New Delhi.
2 The Chief Security Commissioner/RPF, South Central Railway,

Railnilayam, Secunderabad.
3 The Chief Personal Officer, S.C. Rly, Rail Nilayam, Secunderabad.
4 The Deputy Chief Security Commissioner, Rail Nilayam,

Secunderabad.

5. S.C.R. copies

6 The Under Secretary, Union of India, Ministry of Law and Justice

and Company affairs, New Delhi.

7 The Secretary, A.P.Advocates Association Library, High Court

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8 Two C.D. Copies.